

**ONE HUNDRED FIRST LEGISLATURE - FIRST SESSION - 2009**  
**COMMITTEE STATEMENT**  
**LB181**

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**Hearing Date:** Monday February 09, 2009  
**Committee On:** Transportation and Telecommunications  
**Introducer:** Fischer  
**One Liner:** Provide requirements for agreements between railroads and telecommunications carriers

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**Roll Call Vote - Final Committee Action:**  
Advanced to General File with amendment(s)

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**Vote Results:**

**Aye:** 8 Senators Campbell, Fischer, Gay, Hadley, Janssen, Lautenbaugh, Louden, Stuthman

**Nay:**

**Absent:**

**Present Not Voting:**

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**Proponents:**

Dusty Vaughan  
Tim Schram  
Eric Carstenson  
Brian Thompson  
Wyman Nelson  
Rob Logsdon

**Representing:**

Introducing for Senator Deb Fischer  
Public Service Commission  
Nebraska Telecommunications Association  
Consolidated Companies, Inc.  
Great Plains Communications  
Nebraska Cable Communications Association

**Opponents:**

Dalen Wintermute  
Lola LaCrosse  
Brenda Mainwaring

**Representing:**

BNSF Railway Company  
BNSF Railway Company  
Union Pacific Railroad

**Neutral:**

Jill Becker

**Representing:**

Black Hills Energy

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**Summary of purpose and/or changes:**

LB 181 authorizes the Public Service Commission to resolve wire-crossing disputes between railroads and telecommunications carriers, and authorizes a one-time fee of \$1250.

**Section-by-Section Summary**

Section 1 provides harmonizing language with the Nebraska Telecommunications Regulation Act.

Section 2, subsection (1) requires any telecommunications carrier that is placing a line, wire, or cable across a railroad right-of-way to request permission with the railroad through a written application. If the carrier and the railroad are unable to reach an agreement within sixty days after receipt of the application, either party can petition the Public Service Commission for a hearing on the disputed terms and conditions.

Subsection (2) requires the Commission to hold the hearing within 60 days after receipt of the petition, and then issue an order within 30 days of the hearing. The Commission shall consider whether the terms of the agreement are

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unreasonable or against the public interest. The Commission is prohibited from considering the safety, engineering, or access requirements of the railroad. Upon issuance of the order, the carrier and railroad shall have fifteen days to file a conforming agreement. The Commission may reject the agreement if it does not conform to the order.

Subsection (3) authorizes a one-time standard crossing fee of \$1250 for each crossing. The carrier shall also reimburse the railroad for any flagging expenses. The standard fee shall be in lieu of the actual expenses incurred as a result of the placement of the wire.

Subsection (4) provides for a special circumstances exception. Either party may petition the Commission for additional requirements or relief from the standard fee.

Subsection (5) restricts this section to telecommunications carriers certified by the commission. The section does not apply to any longitudinal encumbrance or any line, wire, or cable within the public right-of-way.

Subsection (6) states a provision in the agreement that indemnifies or holds harmless the railroad or its representatives for damages resulting from its own negligence or intentional acts is against public policy and is unenforceable. However, this section does not affect a provision in the agreement that indemnifies or holds harmless the railroad or its representatives for damages to the extent that they were caused by the telecommunications carrier or its representatives.

Subsection (7) provides definitions for railroad carrier and telecommunication carrier.

Section 3 repeals the original section.

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**Explanation of amendments:**

The committee amendment, AM 1282, strikes the original sections and becomes the bill. The amendment makes several language changes for clarification.

In Section 2, subsection (2)(a), the amendment clarifies that the Public Service Commission is required to take into account railroad safety, engineering, access requirements when resolving a crossing dispute between the railroad and telecommunications carrier.

In subsection (6)(a), the term "willful and wanton misconduct" is inserted to replace "intentional acts or omissions" when referring to a railroad's actions that it may not be held harmless from. This new term correlates with existing Nebraska case law.

The term "loss or damage" is inserted in subsection (b) to maintain consistent language throughout the section.

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Deb Fischer, Chairperson